any of these persons against whom execution could not issue in Civil Suit No. 437 of 1953 a person against whom under section 4(i) *(i)* of the Bankruptcy Enactment, a bankruptcy notice could be issued, upon failure to comply with which he could be made a bankrupt? That was the question which Lord Esher asked himself in *Ide's* case, *supra,* and that is the question which for reasons he stated His Lordship answered in the negative. And in the present case it is clear from what has been said that none of the present respondents is a person against whom execution could issue in Civil Suit No. 437 of 1953.

The Judgment Creditor could have done two things. At the commencement he could have served the proceedings upon each of the alleged partners. Or after judgment he could have asked for leave of the Court for execution to issue against any or all of them. He has failed to do either of these things and in the circumstances he is not in a position, and never has been, to take proceedings in bankruptcy which can result in any of these individuals being adjudicated.

Before departing from the case, there is one point which calls for attention. The receiving order against the firm may have been properly made. I do not propose to consider the point unless it is raised in appropriate proceedings.

In the course of the present proceedings, however, it has become clear that one of the respondents, Ang Soon Chong by name, at all material times has been and still is a minor. The judgment debt clearly arises from a trading debt and, in the circumstances, I think I should follow the course taken in *Lovell & Christmas* v. *Gilbert Walter Beauchamp*[5] and order that the receiving order be amended so as to exclude him.

As regards the question of costs, although the respondents have been successful they have succeeded on grounds which they themselves did not raise and had the matter depended on the grounds which they did raise they could not have succeeded for quite frankly I did not believe their evidence or that of their witnesses. To my mind their whole case depended on a deliberate and false fabrication. In the circumstances, I will make no order as to costs.

Order accordingly.

A. E. REYNOLDS v. PUBLIC PROSECUTOR

[A.Cr.J. (Thomson J.) February 15, 1956]

[Ipoh — Criminal Appeal No. 7 of 1956]

Penal Code s. 420 — Cheating in respect of mileage claims — Interpretation of Financial General Orders.

In this case the learned President of the Sessions Court convicted the appellant on the following charge: "That you on or about the 2nd day of May 1955 at Parit Buntar Police District Headquarters, Parit Buntar in the State of Perak cheated the Government of the Federation of Malaya to wit by submitting false mileage claims as per schedule attached for the month of April 1955 and thereby dishonestly induced the said Government of the Federation of Malaya to deliver to you property to wit cash $17-88 cts. and thereby committed an offence punishable under section 420 of the Penal Code." The basis of the charge was that the various journeys specified had not been performed by the appellant in his own motor vehicle but had been performed in police vehicles driven by police drivers. It appeared that at the material times the appellant's car a Wolseley was in Penang and that he used an M.G. car which was lent to him. This car was kept and maintained by the appellant. After hearing the appellant's evidence the learned President asked himself the question "Did the accused really think he was entitled to make a claim for these journeys when they were made in the M.G. car and not in his own Wolseley car?" He held that the appellant ought to have known that he was not so entitled because of Financial General Orders No. 256 which reads as follows:—"Mileage is payable only if — (a) the journeys in question are on Government duty; (b) they are made in a vehicle kept and maintained by the officer making the claim,...." In coming to his decision the learned President accepted the evidence of officers of the Police department, who gave evidence as to the meaning of the General Orders, to be conclusive.

Held: (1) the question of the construction of the General Orders was a question for the Court to decide (2) on a reasonable construction of the General Orders, it was possible for the appellant to act on the assumption that he could make a mileage claim for journeys even if the journeys were not made in his own vehicle but in a vehicle borrowed by him and kept and maintained by him; (3) if the learned President had taken the view that the appellant was entitled to mileage in respect of the journeys performed in the M.G. car it was abundantly clear that he could have dismissed the charge and therefore the conviction must be set aside.

MAGISTRATE'S CRIMINAL APPEAL.

S. K. Das for the appellant.

A. P. Jack (Federal Counsel) for the respondent.

Thomson J. (delivering oral judgment): — This appellant, who is an Assistant Superintendent of Police and, at all material times, was the officer commanding the Police district of Krian, was tried in the Sessions Court at Taiping on three charges of cheating in contravention of section 420 of the Penal Code. The second and third charges against him were dismissed without his being called upon to make his defence but on the first charge he was convicted and fined $250 or two months' imprisonment in default.

Against that conviction and sentence he has now appealed.

The charges against the appellant arose out of monthly claims for mileage which, in common with many other servants of Government, he was entitled to make against Government in respect of journeys done by him in the course of and for the purposes of his official duties by means of his own motor car. That motor car would appear to have been a Wolseley motor car although I think I should observe there is very

little evidence as to whether he was actually the owner of that vehicle. As far as the evidence is concerned there is nothing to shew that he was not in fact the hirer of it but the case seems to have proceeded on the basis that in some sense or other it was his own vehicle and no complaint has been made about that.

The first charge on which the appellant was convicted read as follows :—

"That you on or about the 2nd day of May 1955 at Parit Buntar Police District Headquarters, Parit Buntar in the State of Perak cheated the Government of the Federation of Malaya to wit by submitting false mileage claims as per schedule attached for the month of April 1955 and thereby dishonestly induced the said Government of the Federation of Malaya to deliver to you property to wit cash $17-88 cts. and thereby committed an offence punishable under section 420 of the Penal Code.

There then follows a schedule which sets out a list of 8 journeys involving a claim for a sum of $17.88. I think at this stage I should make it clear that that schedule (and, of course, there is nothing improper in this) was a series of extracts from a very much larger mileage claim which would appear to have been made in respect of 34 journeys covering some 608 miles and involving a total amount of $111.

Now, I pause here to observe and to emphasise that in that charge, though this was not perhaps clear at the commencement of the proceedings, there is a very substantial latent ambiguity. The charge talks about false mileage claims. It does not, however, specify in what respect these mileage claims were false. And it is now clear that they might have been false in more than one way. I will return to the point at a later stage, but I would point out at this stage, that the case commenced and, at any rate to a very late stage, continued on the basis that the claim was false because, so it was alleged, the various journeys specified had not been performed by the appellant in his own motor vehicle but had been performed in police vehicles driven by police drivers.

The second charge and the third charge were similar.

The second charge was in respect of appellant's mileage claim for the month of May and specified two journeys out of a very large number in respect of which $23 had been claimed.

The third charge was in respect of his mileage claim for the month of June and specified four journeys in respect of which $4.20 had been claimed.

Now, as I have said, it is clear from the record that the learned President, counsel for the prosecution and, I think very probably, counsel for the defence, embarked on the trial of these charges on the assumption I have mentioned, that is to say, that what was alleged was the journeys had not in fact been performed by the appellant in his own vehicle but had been performed in various police vehicles.

At the close of the case for the prosecution the learned President applied his mind to the evidence. When he applied it to the evidence relating to the second and third charges, he realised that it amounted to the evidence of a large number of entries in police diaries and other documents kept by the police and the evidence of a number of police drivers and others which all went to shew that the journeys specified had been performed by the appellant in police vehicles and therefore could not have been performed in a vehicle of his own.

I do not propose to discuss the point at length but I think I can sum up the learned President's attitude to the evidence as being to the effect that he did not consider it wholly and in every respect reliable. He was apparently satisfied that certain of the journeys in question had been done in police vehicles but he came to the conclusion and (I see no reason to disagree with him) that the appellant's claim in respect of these journeys might well have been due to some sort of forgetfulness or oversight on his part. He accordingly held that on these charges the appellant should not be called upon to make his defence and he dismissed the second and third charges. As I have said, I see no reason to disagree with him.

With regard to the first charge, however, there was an extremely grave and important piece of evidence which did not occur in relation to the second and third charges. On the first charge, there was the same sort of evidence of the police diaries and so forth, and there was the same sort of evidence by various police drivers as in relation to the second and third charges. But, in addition, there was evidence which the learned President, I think rightly, accepted that at the material dates, the appellant's car was in Penang (that is, the Wolseley car) and therefore it could not have been used as alleged for official duty in the Krian district. He accordingly, and, I think this is beyond criticism, called upon the accused to make his defence on that first charge.

The appellant proceeded to do so and his defence in short was that during the time his own car (that is, the Wolseley car) was in Penang he used an M.G. car which was lent to him and which during the period in question he kept and maintained in the sense that he had it at his disposal and he supplied it with petrol and he paid for sundry small repairs.

Now it seems to me that up to that point there was no reason to doubt the truth of the appellant's story. There was a great deal of evidence to support it. There was his own evidence; there was the evidence of the owner of the car; there was the evidence of a leading member of the Indian community who had been visited by him in it on his official business; there was the evidence for what it was worth of a party said to be a police informer who said the appellant had lent him this M.G. car for certain police purposes; and perhaps most important of all some of the prosecution witnesses (although, I do not think the force of this was quite appreciated during the course of the prosecution) admitted that they saw him in the M.G. car, which after all is a fairly distinctive sort of vehicle.

The appellant went on to say that all the journeys for which he had claimed during the absence of his own car in Penang had been done in this M.G. car except five trips from his house at Bagan Serai to his place of business at Parit Buntar amounting in all to some 25 miles for which he was paid $5. As regards these journeys he admitted that he did the outward trips, that is, the trips from his house to his office, in the police vehicle but he said that the M.G. car was at the time being used by the police informer on police business and that in any event it was brought to Parit Buntar in each case in the course of the day so that he could go home in it.

Now, that is a very brief summary, but I hope not an unfair summary, of the defence to which the learned President listened. What calls for examination is the way in which he dealt with it.

It may be that the learned President was unduly impressed by the undoubted importance of the evidence of the appellant's own Wolseley car being in Penang. And it may be that it was only very late in the case that he suddenly realised the latent ambiguity in the charge to which I have referred. But having studied the case with some care and having studied his Grounds of Judgment I do not think it unfair to say that he proceeded to consider the first charge on a different basis from that on which he had considered the second and third charges. He did not consider it by addressing his mind to the question in the first place, were the journeys in fact made or not made in the appellant's own vehicle? He considered it on the basis of asking himself :—

"Did the accused really think he was entitled to make a claim for these journeys when they were made in the M.G. car and not in his own Wolseley car?

The unfortunate truth is that in view of the ambiguity in the charge it was open to him to consider the question in either or both of these ways.

In the event, after considering a great deal of evidence as to the Government's Financial General Orders the President concluded that the appellant was not entitled to claim in respect of these journeys made in the M.G. car and that he ought to have known that he was not entitled to claim for these by reason of the provisions of the Financial Orders.

To my mind, the conclusions could not be successfully attacked if it were not for one thing. And that one thing is that I am unable to agree with the learned President as to the effect of these Financial General Orders.

It may be that the learned President accepted the evidence of the various functionaries of the Police Department who gave evidence as to what they considered to be the meaning of the relevant Orders as conclusive. If so, I think he was wrong. Whatever may be the attitude of Government functionaries who have to deal with these Financial General Orders there is nothing sacrosanct about them. They were not brought down from Pisgah by any bureaucratic Moses. They are written words and like any other written words what they mean is a matter of construction. It is no concern of mine as a Judge what civil servants do among themselves. As far as a Judge is concerned, they can say that black is white and for the purposes of their own activities black is white. But when the criminal law and its sanctions are invoked and any question of construction is involved then that is a question for the Court to decide and not any Financial Assistant or even any Superintendent of Police who happens to be in charge of records.

On that question of construction, it seems to me that what I am concerned with is the construction of Financial General Orders No. 256 which I must confess I never read till I applied my mind to this case. It reads :—

"Mileage is payable only if —

(a) the journeys in question are on Government duty;

(b) they are made in a vehicle kept and maintained by the officer making the claim,....."

It is true that the word "owner" and the word "owned" occur in various other Orders but it seems to me, again, as a matter of construction, what is meant by the word "owner" is not the "owner" in law but the person who keeps and maintains a particular vehicle. If that be so, the question of legal ownership is entirely irrelevant. If a Government officer keeps and maintains a vehicle, it seems to me that it is completely irrelevant whether it comes into his possession by reason of a gratuitous loan or any other bailment or hiring.

Now that is my opinion. I may be right or I may be wrong. I certainly have the misfortune to differ from one or two of the no doubt very eminent officials who have given evidence in this prosecution. But whether I am right or whether I am wrong, I am not prepared to admit for one moment that it is an unreasonable construction that I have put upon the Order in question. And that being so it follows that there was nothing unreasonable, still less was there anything wrongful so as to bring the matter within the scope of the criminal law for the appellant or anybody else adopting the same construction.

That being so, and if the learned President had realised that it was so, then if the journeys were in fact performed in the M.G. car the appellant was perfectly entitled to mileage in respect of them or at the very lowest to be regarded as quite honest in believing that he was so entitled. And it seems to me that had the learned President taken that view he would then have realised that the first charge was very much on all fours with the second and third charges which he had already disposed of and the questions involved were the same. If he had realised that then clearly he would have applied the same principles to decide the first charge as he did in deciding the second and third charges and this would have led him to the same conclusions.

Reading the Grounds of Judgment it is clear that in the learned President's mind the whole sting in the case against the appellant on the first charge lay in his presumed familiarity with the Financial General Orders. But that sting was drawn when it is realised that the learned President himself was interpreting these Orders in a way that was probably wrong and which certainly was not the more reasonable way of interpreting them. Had he done as he did in connection with the second and third charges and had he applied his mind to the true questions of whether the journeys were or were not performed and whether it was reasonably possible that the appellant might have claimed in respect of some journeys he did not in fact perform by reason of forgetfulness then it is abundantly clear that he would have treated the first charge as he did the second and third charges and dismissed it.

In all the circumstances of the case and for these reasons I am compelled to set aside the conviction and make an order of acquittal and discharge.

Appeal allowed.

Solicitors: *Das & Co.*

In re H. W. SHAWCROSS & *In re* A. G. NEALE CROSS

[O.C.J. (Whyatt C.J.) February 16, 1956]

[Singapore — Admission of Advocates & Solicitors No. 28 of 1955 and No. 2 of 1956]

Advocates & Solicitors Ordinance (Cap. 62), ss. 5, 34 and 36 — Special grounds for dispensing with the requirement of six months instruction in law in the office in the Colony of a practising advocate and solicitor and shortening the period during which notice of the petition is required to be posted — What constitutes special grounds.

In these cases, the petitioners presented petitions to be enrolled as advocates and solicitors of the Colony. They subsequently applied to the Court pursuant to the provisions of s.5(5) of the Advocates & Solicitors Ordinance for an order to be made on special grounds dispensing with the requirement of six months instruction in law in the office in the Colony of a practising advocate and solicitor and shortening the period during which notice of their petitions is required to be posted. In his affidavit Sir Hartley Shawcross, one of the petitioners, stated that he had been in continuous and active practice at the Bar in England and elsewhere in Her Majesty's Dominions for the past 30 years and during five of these years he held the office of Attorney-General for England. He also stated that he has considerable experience and special knowledge of public and private international law. He further stated that he had been retained by three Dutch oil companies to appear for them in an appeal from the decision of the Compensation Board and that the issues arising in the appeal are of great complexity and importance involving difficult questions of public and private international law. The other petitioner, Mr. Geoffrey Cross, stated that he had been in active practice in England and that he was a member of the Lord Chancellor's Committee on Private International Law. The Singapore Bar Committee opposed the applications on the following grounds: (i) no counsel should be granted exemption from the requirement of receiving instruction in law for six months, unless he establishes as one of his special grounds that he has acquired an adequate knowledge of local law and local conditions and of all the branches of the advocates and solicitors' profession; (ii) that s.5(5) of the Advocates and Solicitors Ordinance cannot apply to an **ad hoc** admission, that is an admission to appear in one particular case because (a) as air travel was comparatively undeveloped in 1935 when the Ordinance was passed, the Legislature could not have contemplated then the possibility of counsel visiting the Colony for one particular case only (b) the special grounds relied upon by a petitioner must apply to the whole field of professional work which an advocate and solicitor might carry out once he has been admitted and that any ground which is relevant only to an **ad hoc** admission falls outside the ambit of the section.

Held: (1) the words "special grounds" are wide and flexible words and no Court can or should attempt to lay down an exhaustive definition of these words. Each case must depend on its own particular facts and it is for the Court to say whether the facts are so special and exceptional as to justify dispensing with the usual procedure of six months notice and six months instructio